



LUMMI INDIAN BUSINESS COUNCIL

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March 9, 2010

U.S. Army Corps of Engineers
Attn: CECW-CE, Douglas J. Wade
441 G Street NW
Washington, DC 20314-1000

SUBJECT: Opposition to Proposed Revised Policy Regarding Variances from Vegetation Standards for Levees and Floodwalls (Docket No. COE-2010-0007)

Dear Mr. Wade:

The purpose of this letter is to provide comments on the February 9, 2010 proposal by the Army Corps of Engineers (Corps) to revise its policy regarding variance from the national standard for managing vegetation on levees that are part of the Public Law (PL) 84-99 program. The Lummi Nation entered the National Flood Insurance Program (NFIP) in 1997 and has both a responsibility to manage floodplains on the Reservation and, as co-managers of the salmon and shellfish resources, a proprietary interest in floodplain management off-Reservation. There is an ongoing need to find sustainable and sound policy approaches to achieving social and ecological goals related to how floodplains are managed.

We are opposed to the Corps' proposed revised policy regarding variances from vegetation standards for levees and floodwalls (Docket No. COE-2010-0007). Fundamentally, it is difficult for us to see how this proposal will help our region achieve the goal we share with the Corps of protecting and restoring Puget Sound by 2020. In addition, this proposal will not effectively provide lasting certainty for local implementers in Puget Sound and across Washington state who have come to rely on significant levels of PL 84-99 funding in their levee management programs. It will not improve our ability to meet our shared desire to align flood safety and environmental rules in a way that works for our community and it will hinder our ability to protect clean water for our shellfish and recover salmon.

While the revisions provide an option for departures from the highly restrictive national standard, the proposed variance option would establish an application process so onerous that it would rarely, if ever, be used. We believe that one end result of the implementation of the proposed revisions will be a permanent reduction in the amount and quality of vegetation on the hundreds of miles of levees within the program. Even under the current variance we are aware of the removal of hundreds of trees in one jurisdiction in 2009, and the likelihood that thousands more will be lost. The proposed revision would only exacerbate this existing problem. A corollary end result will be the continued, unresolved question of the exposure of program participants to legal issues stemming from the impacts of degraded riparian conditions on listed salmon

populations. The proposal contributes little to advancing an effective solution to this existing problem.

We request that the Corps withdraw and recraft this proposal. We strongly recommend that the standards that emerge from this rule-making process

- Adhere to the current best available science regarding the interaction between vegetation and levees, including information that would be gained through a timely regional pilot project that would investigate this interaction and utilize the information in the near term;
- Continue and increase flexibility for PL 84-99 program participants to retain vegetation of any size on levees where there is no evidence that such vegetation compromises public safety; and
- Support program participants' need to resolve existing legal concerns stemming from the conflict between the existing standards and the recovery of listed species.

We understand that in making policy decisions like this one the Corps must account for its nationwide operating context. We encourage, and are willing to work closely with the Corps to develop policy options that reflect local conditions and opportunities and align better with our shared goals while meeting the intent of the nationwide interests of the Corps.

Our overall objective is for the Corps to revise the levee maintenance/repair guidelines so that existing levees are setback a sufficient distance from the active channel to allow more natural river processes to occur, including the establishment of forested riparian areas "inside" the levees. If forested riparian areas are established inside the setback levees, vegetation on the levees would not as important a factor.

Sincerely,

A handwritten signature in blue ink, reading "Merle Jefferson, Sr.", with a long horizontal flourish extending to the right.

Merle Jefferson, Sr., Executive Director
Lummi Natural Resources Department